

Workshop
International perspective on property right regimes

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**Property rights institutions and property rights regime in
urban development process in Poland**

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Property rights institutions in Poland

History

- Poland regained independence in 1918 - four civil law systems
- Real estate law was unified only after WWII in 1946 - special protection to “social ownership”
- Special case - Poland avoided the total nationalisation of land with the exception of Warsaw
- Two profound changes
- The restoration of property rights and the right to the value of land
- A lack of the general restitution law



Three Types of Real Property

Land - a separated property within an enclosed boundary on the Earth's surface that constitutes a separate object of ownership

Buildings - permanently connected with land, where, under special provisions, they constitute separate subject of ownership from the land

Apartments - housing premises (flats) or commercial premises for purposes other than housing ones (e.g. for conducting business activity) (CC 46 §)

Buildings

A general rule

- "integral parts" of the land, "permanent", share the legal regime of the land

Legally separated from the land

- buildings on land owned by the State or by a local self-governing entity, constructed by a perpetual user or acquired by him as a part of an agreement of perpetual usufruct
- buildings located on land expropriated in Warsaw according to a decree of 26.10.1945

The total separation of the ownership of buildings from ownership of the land

- very rare, farmers' houses

Separate apartments

- Not considered as integral parts of the building (and the land), but constitute independent real property
- Two criteria should be met in order for apartments to constitute separate property:
 - “independent” (which is confirmed by a certificate from the local architecture department)
 - legally separated (a notarial deed must be signed creating the apartment and a separate mortgage register entry should be created)
- Strictly linked to a relevant share in the ownership (or perpetual usufruct) of the land and in the ownership of “common parts” (entrances, staircases, lifts, structural elements, etc.)
- Owners of separate apartments form a condominium

Property rights

- (a) full ownership (*własność*)
 - (b) perpetual usufruct (*użytkowanie wieczyste*)
- Restricted rights in property**
- (c) usufruct (*użytkowanie*)
 - (d) servitude (*służebność*)
 - (e) cooperative right to residential premises (*własnościowe spółdzielcze prawo do lokalu mieszkalnego*)
 - (f) cooperative right to business premises (*spółdzielcze prawo do lokalu użytkowego*)
 - (g) cooperative right to a house (*prawo do domu jednorodzinnego w spółdzielni mieszkaniowej*)
 - (h) mortgage (*hipoteka*); (i) timesharing

Full ownership

- The right of ownership of a plot extends above the plot as well as below its surface
- The boundaries of socio-economic usage however are limited by regulations concerning water, mineral resources and air space use (CC 143 §)

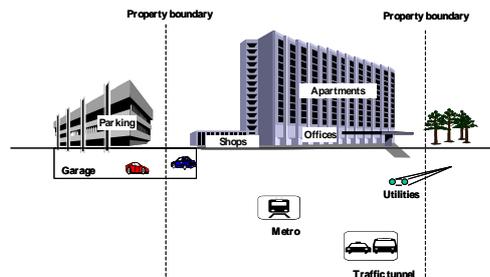


Figure by Hans Mattsson

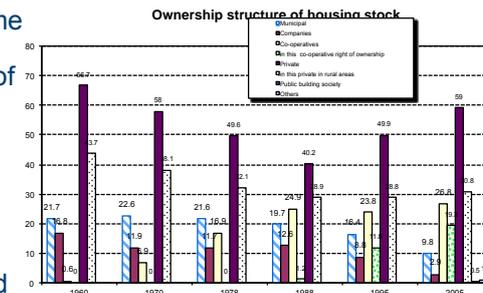
- The mining minerals, the use of air space above his grounds. Water in ponds and water in well, water in lakes and rivers and underground sources, technical infrastructure, buildings, the trees, other plants

Perpetual usufruct

- Introduced by the law of 14 July 1961
- A right established on land owned by the State or self-governing institutions
- A long-term interest in land, usually 99 years
- Contract between in the form of a notary deed - the period of agreement, investment conditions and development works, the usage of buildings, structures connected to the ground, recompensation for the perpetual user for building and structures existing on the land at the date of expiry of the agreement
- Disposable, subject to inheritance, encumbrances (mortgage, easements, usufruct)
- The holder of perpetual use is an owner of the buildings, the ownership of buildings shares the legal fate of perpetual usufruct

Cooperative rights

- A very important role until the 1990s - significant numbers of flats are held under this regime
- In order to become member of a housing co-operative,
 - To pay a special membership fee
 - To accept the rules, which govern the cooperative and its statutes
- Gradually being replaced with full ownership



Land Registration

- The mortgage register or “perpetual books” (księga wieczysta)
 - to register titles and encumbrances
 - Section I - specifies the estate itself in the legal and physical sense together with some beneficiary rights for the property owner,
 - Section II - specifies the owner or perpetual user of the property,
 - Section III - contains any legal burdens on the real property, limits in disposal of land, and the easement etc.
 - Section IV - contains details of any mortgages on the property
- The land and buildings register (ewidencja gruntów i budynków)
 - describe the physical features and the use of the land and buildings - cadastral register, (geodetic) purposes

Property rights regime in urban development process in Poland

Havel, B. (2014) *Delineation of property rights as institutional foundations for urban land markets in transition*. Land Use Policy. Accepted for publication

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New market institutions - years 1995/98

- New planning system (The Act on Spatial Development of July 1994)
 - the new Land Use Planning and Development Act of 2003
- New law concerning real estate management relating to the state and local authorities; the division, consolidation and subdivision of real estate; pre-emptive purchase rights of real estate; the expropriation and the return of expropriated real estate; participation in the cost of technical infrastructure building; real estate valuation; and the regulation and licensing of real estate markets and professionals (The Act on Real Estate Management of 21 August 1997, in force from January 1st 1998)

New market institutions

- the initial period till 1995 when plans prepared under different economic circumstances was valid (old plans)
- the period between 1995-2003 when municipalities had an option to adopt the new plans according to the provision of new planning law of 1994. Some did this but also the so-called old plans were still valid if new plans were not adopted. In the cities where no initiatives were undertaken to elaborate the new plans, the old plans were still the base to issue the building permissions
- the period after 2003 when the old plans finally expired and legally binding became only plans prepared under the law of 1994 (the Act of 1994) or the law of 2003

The characteristics of property rights regime as an institution in land development process

<i>Explanatory variables</i>	<i>Operational components/ Examples of rights</i>
The position of the municipality in the development process	<ul style="list-style-type: none"> - the position of the municipality versus government representations and private landowners (the right to decide how land will be developed) - the planning rights - the right to develop versus ownership rights (the right to decide by whom and how land will be developed)
The balance between certainty and flexibility in the development control	<ul style="list-style-type: none"> - the hierarchy of planning and availability of instruments to control development (the right to decide how land will be developed and control of externalities, the power to protect the third party's interest) - the tools to achieve expressed objectives of land use policy/spatial planning system
Economic right in land development process	<ul style="list-style-type: none"> - the contribution to development costs (planning costs, the costs of the provision of infrastructure, transfer to the municipality street and public road areas) - the compensation to landowners for land use restrictions - the right to development gain

Every landowner has a right to develop, according to the local plan, or without the local plan according to the decision on conditions of site development

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- at least one adjacent plot that is accessible from the same public road must be developed in such a way as to enable the requirements to be laid down for the new development as regards the continuation of: functions, parameters, features , etc. (this is the so-called good neighbourhood principle)
- the land must have access to a public road
- the existing or planned land infrastructure must be sufficient for the purposes of the project concerned
- no permission is required for a removal of land from agricultural or forestry use

Economic right in land development process

The cost of drawing up a local detailed plan	Covered in general from the budget of the municipality
Infrastructure costs	System of planning charges – a special one-time fee and betterment charges; If, in connection to the enactment of a local plan, the value of the property has increased - one-time fee is set out in relation to the percentage increase in the value of the property; it cannot be higher than 30% - charged in cases when the owner sells the real estate within 5 years from the date when the local plan or its revision came into force Betterment charges are levied after creation of conditions for the connection of property to individual devices of the technical infrastructure or conditions for the use of built roads.
Transfer of street and public road areas to the municipality	The landowner must transfer to the local authority's ownership those parcels that have been separated for streets, and in return should receive compensation in cash or in the form of land
Compensation to landowners for land use restrictions included in the local plans	Compensation is paid in connection to the enactment of a local plan or its amendment. The problem is that most municipalities do not have funds to pay the compensation. It seriously hindered the planning activities.
The right to development gain / increase in land value	Passive land policy of municipality Expropriation allowed in the areas covered by the local plans which are designated in the plan for public purposes, therefore an increase in land value due to planning belongs to the private landowner in expropriation process

The processes of land development

	MUNICIPALITY elaborate the plan	COOPERATION in local plan preparation	PRIVATE no plan
SINGLE DEVELOPMENT	X		X
PRIVATE Institutions By developer	X		X
MUNICIPALITY Institutionary Public body			

- The years 1996-2000 - intensification of construction activities, a construction boom
- Warsaw – A lot of new construction took place despite the ownership status of the land was unsettled and questionable

The outcome of urban land development process

Positive influences on character of urban areas

- re-urbanisation of dual structure of the cities
- improvement of the service provision of the socialist housing estates
- increased density of development in the centrally located areas in cities
- re-industrialisation based on the restructuring of the large industrial complexes located in the largest metropolitan areas

Problems

- haphazard developments in the cities
- urban sprawl, especially developments around the existing road systems
- the public space problems, the gated communities
- the general inadequate provision of urban infrastructure, including both the primary and secondary infrastructure

Conclusions

- Dynamic urban development took place despite the ownership status of the land was unsettled and questionable
- Institutional foundations for land market under capitalism were developed subsequent to the dynamic of the market itself - many transformations
- The subsequent delineation of property rights by property right regime might be also criticized
 - In comparison to the number of bills discussed in relation to restitution, the development of policy and regulatory framework with the focus on consistent land policies that operate within a stable institutional framework was of secondary importance
- Market governance system and unconstrained property rights approach, dominated the development in urban space
- Generalisation / perspective
- Lesson - the delineation of property rights regime might create the potential for response for socio-economic and spatial inequalities and polarization

Conclusions

- de Soto-style - experience specific to Poland indicates the need to pay greater attention to development processes and delineation of property rights
- Webster and Lai (2003) interpretations of efficient allocation of development rights across spatial scales and sectors - the perfect match between the allocation of rights and liabilities within urban context is difficult to be reached by private markets
 - 1) the economic rights and liabilities were not allocated clearly by governmental institutions
 - 2) the role of planning and urban plans in a market economy was not considered accordingly
 - 3) the communities in country in transition couldn't also take advantage of the long-term relations by forming local organisations or undertaking a higher level of collective actions that address the problem of externalities or public good
- In countries establishing the new system from scratch there is a greater need for more centralised governmental institutions in delineation of property rights and determination of criteria and/or incentives according to society needs for a particular land market to built institutional foundations for private markets